

To LLC or not to LLC?

Ryan Baker for Ag Proud

Let's face it, farm operations can get complicated. It's not always easy working with different family members and business partners. It can be like trying to make holiday plans that keep the kids, parents, siblings, in-laws and out-laws all happy at the same time. But instead of facing the challenge once a year, that can be life every day on the farm. Wouldn't it be nice to have structure in place where everyone knows their role and has their own area of control?

Imagine a situation where Mom and Dad started the farm and had kids who are now grown and married with children of their own. Maybe some of the kids are involved in the original farm operation and others are not. Maybe one is using some farm resources for his or her own spin-off venture with a non-family business partner. Where are the lines defining what belongs to whom, who is responsible for which costs and what happens when the inevitable steaming mess is left behind and nobody wants to clean it up?

The solution may mean converting the informal operating structure the family has always used, but is no longer working smoothly, into something that addresses the current complexity of people and operations involved. Setting up one or multiple legal entities, such as a limited liability company (LLC), might be part of that solution.

Business formation options

There are multiple ways you can set up your business, e.g., proprietorship, partnership, S Corporation, C Corporation or limited liability company. Incorporating your business (S Corporation or C Corporation) generally limits your personal liability for business obligations but generally involves greater start-up and operating expenses, as well as added paperwork. A corporation is a distinct legal entity that is responsible for paying its own debts and obligations. Shareholders risk only the loss of the funds they have invested.

Limited liability company (LLC)

As an alternative to incorporation, consider operating as a limited liability company (LLC). For the most part, forming an LLC is simpler and involves less paperwork than incorporating your business. Like a corporation, an LLC provides owners with protection from personal liability for business debts and obligations.

However, most LLC owners can choose to have their businesses treated as partnerships for federal income tax purposes. Partnership treatment means that income, losses, deductions and credits pass through to the individual owners (called "members") to be reported on their individual income tax returns, so LLC

income is not subject to double taxation. Partnership tax treatment also permits an LLC to specially allocate income and expenses among its owners to the same extent a partnership can.

Keep in mind that for tax years 2018-25, a proprietorship, partnership, S Corporation and LLC (not taxed as a C Corporation), a deduction of up to 20% is available for qualifying taxpayers from their "qualified business income." Your financial adviser, working with your CPA, can determine if you are eligible for this deduction.

Potential modern farm solutions

While this article is not intended as advice for anyone's specific situation, there are some considerations that generally apply:

- The LLC itself is just a legal shell and takes only a few minutes to set up online.
- To be effective for running the business, the LLC needs to have an operating agreement which documents who is involved and who has what control, among other things.
- Depending on the members involved, a separate buy-sell agreement may be needed, while other times some simple buy-sell provisions are just included in the

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operating agreement. See our article on buy-sell agreements, “Avoiding a three-D disaster on your farm” in the March 2020 issue of *Ag Proud*.

- There are (at least) two parts to every farm operation: land and an operating business.
- High-liability operations should generally be carved out into a separate entity that limits liability extending to other assets.
- If we are talking about a multigenerational situation, the LLC alone is often not sufficient to accomplish everything that is important to the family; other legal structures may be required.

In summary, the LLC can be a very effective tool to address issues that arise on the simple farm that has evolved into something more complicated. It can create legal separation and valuable protection between different parts of the operation, e.g., trucking separate from cattle, separate from land, separate from equipment, separate from operations. Structured properly, it can also be effective for controlling the transfer of ownership. However, the LLC alone may fall short of achieving the family’s goals in several important areas. Before installing this, or any legal structure, it is best to do it in the context of a coordinated plan working with a business and estate planning professional, attorney and tax adviser. **AG**

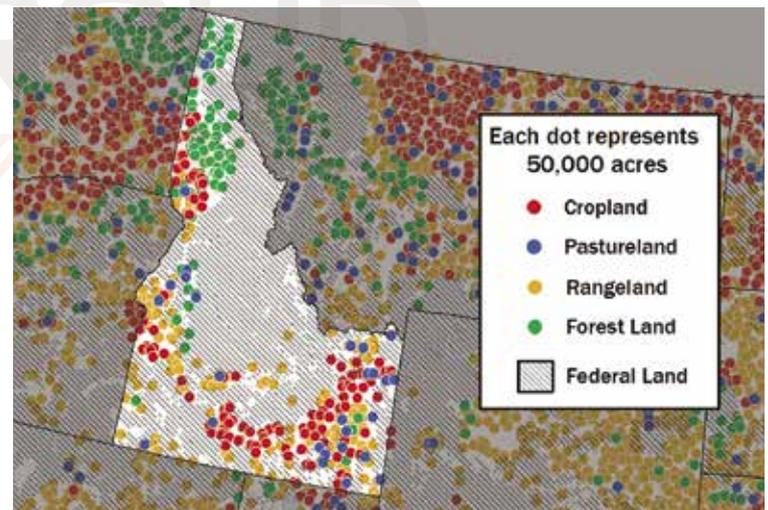
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Dominant land uses, 2017



Dots are distributed randomly within each area. Note that dots do not represent actual feature locations or points.

Data Source: 2017 National Resources Inventory, USDA, Natural Resources Conservation Service.
Map Source: USDA, Natural Resources Conservation Service, Soil Science and Resource Assessment, Resource Inventory & Assessment Division, Beltsville, MD August 2020

U.S. agricultural exports 2018-19 (in millions \$)

U.S. state rank in 2019	Idaho	2017	2018	2019	% Increase or decrease over previous year
11	Beef	178.7	215.0	212.1	-1.3%
31	Pork	3.3	4.9	5.4	9.9%
14	Hides	35.6	28.8	20.8	-27.8%
16	Other livestock	64.0	57.9	59.7	3.2%
4	Dairy	355.9	370.2	417.5	12.8%
31	Other poultry	9.4	11.8	10.7	-9.5%
21	Plant products	1,355.9	1,387.6	1,528.87	10.2%
5	Fresh vegetables	140.1	156.7	172.1	9.8%
5	Processed vegetables	263.0	263.2	288.7	9.7%
5	Wheat	292.5	294.2	348.2	18.3%
29	Corn	16.0	26.5	18.1	-31.6%
17	Feeds	111.9	120.4	117.8	-2.1%
17	Grain products	70.4	76.9	75.0	-2.4%
	Idaho total exports	2,002.9	2,076.1	2,255.1	8.6%

Data Source: USDA, Economic Research Service; USDA, Foreign Agricultural Service, Global Agricultural Trade System, released Oct. 28, 2020
Source: www.ers.usda.gov/data-products/state-export-data